



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2013-0283]

Hours of Service of Drivers: Agricultural and Food Transporters Conference (AFTC); Granting of Renewal of Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: FMCSA announces its decision to renew an exemption from the 30-minute rest break provision of the Agency's hours-of-service (HOS) regulations for commercial motor vehicle (CMV) drivers transporting livestock. The Agricultural and Food Transporters Conference (AFTC) of the American Trucking Associations (ATA) requested that the exemption, granted on behalf of several associations of agricultural transporters, be renewed to enable these drivers to continue to safeguard the health of certain livestock during long-haul deliveries by not having to take the rest break. The Agency has determined that it is appropriate to renew this exemption for a period of two years to ensure the well-being of the Nation's livestock during interstate transportation by CMV. The exemption, subject to the terms and conditions imposed, will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

DATES: This exemption is effective June 12, 2015, through June 12, 2017. Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2013-0283 using any of the following methods:

- Federal eRulemaking Portal: Go to www.regulations.gov. Follow the on-line instructions for submitting comments.
- Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- Fax: 1-202-493-2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The online FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgment page that appears after submitting comments on-line.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Schultz, Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards, FMCSA; Telephone: 202-366-2718. E-mail: MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments, and determines whether granting or renewal of the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for the grant or denial, and, if granted, the

specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption (up to 2 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Background

On December 27, 2011, FMCSA published a final rule amending its HOS regulations for drivers of property-carrying CMVs. The final rule included a provision requiring drivers to take a rest break during the workday under certain circumstances. Drivers may drive a CMV only if a period of 8 hours or less has passed since the end of their last off-duty or sleeper-berth period of at least 30 minutes. FMCSA did not specify when drivers must take the minimum 30-minute break, but the rule requires that they wait no longer than 8 hours after the last off-duty or sleeper-berth period of that length or longer to take the break. This new requirement, as amended by a subsequent decision of the United States Court of Appeals for the D.C. Circuit,¹ is codified at 49 CFR 395.3(a)(3)(ii).

Exemption

On June 19, 2013, the National Pork Producers Council (NPPC) on behalf of itself and 12 trade associations, including ATA's Agricultural and Food Transporters Conference, requested a limited two-year exemption from the rest-break requirement for drivers of CMVs engaged in the transportation of livestock. A copy of the request is included in the docket referenced at the beginning of this notice.

¹ American Trucking Associations, Inc., v. Federal Motor Carrier Safety Administration, 724 F.3d 243 (D.C. Cir. 2013).

The NPPC stated that complying with the 30-minute rest break rule would cause livestock producers and their drivers irreparable harm, place the health and welfare of the livestock at risk, and provide no apparent benefit to public safety, while forcing the livestock industry and its drivers to choose between the humane handling of animals or compliance with the rule.

FMCSA analyzed the request and on June 11, 2014, granted, subject to specific terms and conditions, an exemption from the rest break requirement for drivers transporting livestock. The term of the exemption ends on June 11, 2015. The exemption period was limited to one year in order to gather additional data about the highway safety of operations under the exemption. Carriers utilizing the exemption were required to report any accidents, as defined in 49 CFR 390.5, to FMCSA. As of May 1, 2015, no accidents had been reported.

Population of Drivers and Carriers Engaged in Livestock Transportation

As of May 13, 2015, FMCSA's Motor Carrier Management Information System (MCMIS) listed 65,872 motor carriers that identified livestock as a type (though not necessarily the only type) of cargo they transport. These carriers operate 220,481 vehicles. The carriers employ 277,782 drivers, but approximately 145,000 drivers qualify as "short-haul" drivers and thus are exempt from the 30-minute break requirement. Therefore, fewer than 135,000 CMV drivers could utilize this exemption.

Data in the docket show that the temperature inside a stopped livestock trailer can rise rapidly during hot summer days, and can drop rapidly on winter days, especially in windy conditions. Substandard transportation of livestock elevates the risk that the food derived therefrom may be unsafe for human consumption. Industry guidelines describe

stops of up to 30 minutes as problematic for many animals, even in favorable weather, and encourage drivers of livestock to keep the CMV moving “if at all possible.”

Livestock drivers take breaks, but generally of much shorter duration than 30 minutes.

As noted below, carriers utilizing the exemption are required to report any accidents, as defined in 49 CFR 390.5, to FMCSA. Since the granting of this exemption on June 11, 2014, the FMCSA has not received any such reports.

FMCSA Determination

In consideration of the above, FMCSA has determined that it is appropriate to renew this exemption from the 30-minute break requirement for a period of two years, subject to the following terms and conditions:

Extent of the Exemption

This exemption is limited to drivers engaged in the interstate transportation of livestock by CMV. The exemption from the 30-minute rest-break requirement is applicable during the transportation of livestock and does not cover the operation of the CMVs after the livestock are unloaded from the vehicle.

This exemption is only available to drivers transporting livestock as defined in the Emergency Livestock Feed Assistance Act of 1988, as amended (the 1988 Act) [7 U.S.C. 1471(2)]. The term “livestock” as used in this exemption means “cattle, elk, reindeer, bison, horses, deer, sheep, goats, swine, poultry (including egg-producing poultry), fish used for food, and other animals designated by the Secretary [of Agriculture] that (A) are part of a foundation herd (including dairy producing cattle) or offspring; or (B) are purchased as part of a normal operation and not to obtain additional benefits under [the 1988 Act].” The exemption is further limited to motor carriers that

have a “satisfactory” safety rating or are “unrated”; motor carriers with “conditional” or “unsatisfactory” safety ratings are prohibited from utilizing this exemption.

Accident Reporting

Motor carriers must notify FMCSA by email addressed to MCPSD@DOT.GOV with 5 business days of any accident (as defined in 49 CFR 390.5) that occurs while its driver is operating under the terms of this exemption. The notification must include:

- a. Name of the motor carrier and USDOT number,
- b. Date of the accident,
- c. City or town, and State, in which the accident occurred, or closest to the accident scene,
- d. Driver’s name and license number,
- e. Vehicle number and state license number,
- f. Number of individuals suffering physical injury,
- g. Number of fatalities,
- h. The police-reported cause of the accident,
- i. Whether the driver was cited for violation of any traffic laws, motor carrier safety regulations, and
- j. The total driving time and total on-duty time prior to the accident.

Period of the Exemption

This exemption from the 30-minute break requirement [49 CFR 395.3(a)(3)(ii)] is effective during the period June 12, 2015, through June 12, 2017, unless withdrawn or restricted sooner.

Safety Oversight of Carriers Operating Under the Exemption

FMCSA expects each motor carrier operating under the terms and conditions of this exemption to maintain its safety record. However, should safety deteriorate or credible and substantial public comment in opposition to the exemption be received, FMCSA will, consistent with the statutory requirements of 49 U.S.C. 31315, take all steps necessary to protect the public interest. Authorization of the exemption is discretionary, and FMCSA will immediately revoke the exemption of any motor carrier or driver for failure to comply with the terms and conditions of the exemption.

Preemption

During the period the exemption is in effect, no State may enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a person or entity operating under the exemption [49 U.S.C. 31315(d)].

Issued on: June 4, 2015.

T. F. Scott Darling, III,
Chief Counsel.

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